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## COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JANITA LYNETTE WATKINS,

Defendant and Appellant.

C056248

(Sup.Ct.No. 06F08312)

After her motion to suppress was denied, defendant pled no contest to possession of methylene dioxymethamphetamine or ecstasy for sale (Health & Saf. Code, § 11378). She was placed on formal probation for five years. On appeal, defendant contends it was error to deny her motion to suppress because there was no reasonable suspicion of her involvement in criminal activity to support her detention. We disagree. Defendant was accompanying a suspect to a drug transaction set up by a confidential informant. Knowing that drug dealers often worked

in tandem, the police had a reasonable suspicion to detain her. We affirm.

#### FACTS

On August 28, 2006, Detective Chris Maher received information from a confidential informant that a man known as Playboy was selling narcotics. On a phone call monitored by the police, the informant ordered one-fourth of an ounce of rock cocaine to be delivered at a Walgreens store. At the stakeout, Maher saw a Black man and a Black woman approaching Walgreens. The informant told him that was Playboy and "one of his girls."

Detective Maher instructed the arrest team to detain the pair. Deputy Douglas Mukai and his partner drove to the Walgreens parking lot and got out of their patrol car. Through the front door, they saw the suspects inside. At Detective Maher's direction, the two deputies went inside and detained Playboy and his companion, defendant.

Deputy Mukai handcuffed defendant and escorted her to the patrol car outside. There he asked her if she was on probation or parole. She said, "no." He then asked if she had anything illegal. She said, "yes." Deputy Mukai asked what and defendant responded, "rock." He asked where and defendant said in her bra. Deputy Mukai uncuffed defendant and asked her to remove it. Defendant removed two plastic baggies from her left bra area. One contained an off-white chunky rock-like substance and the other 16 ecstasy pills. Deputy Mukai recuffed defendant and arrested her.

Playboy was identified as Emanuel Snowden. He had \$106 in cash on him. At the scene, one of the officers conducted a records check and discovered Snowden had an outstanding felony warrant and was on searchable probation.

The substances in the plastic bags tested positive in a field test for controlled substances. Later testing confirmed there were 16 pills of ecstasy and 4.12 grams of cocaine base.

Defendant was charged with possession of cocaine base for sale (Health & Saf. Code, § 11351.5), and possession of methylene dioxymethamphetamine for sale (Health & Saf. Code, § 11378).

After the preliminary hearing, she moved to suppress the evidence of the drugs. She argued she was in custody once she was placed in handcuffs and her statements were made before she was given her *Miranda* warnings (*Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694]). She also argued the officers had no right to detain her; the officers made assumptions not based on any facts.

At the hearing on the suppression motion, Detective Maher testified it was not uncommon for two people to work in tandem in drug sales, particularly if one was on searchable probation or parole. This practice was common for those who sold on the street. When the informant identified defendant as one of Playboy's girls, Maher thought she might be holding the dope.

The trial court found Playboy could be detained and the officers had a reasonable suspicion that defendant was also involved, so her detention was permissible. Handcuffing

defendant for a detention gave the court some pause, but it considered the practicalities of the situation; it was night, the store was open, defendant was transported only about 30 feet, and the questioning was quick and by only one officer. The court found a justified detention, not an arrest, so *Miranda* advisements were not required before questioning. The court denied the motion to suppress.<sup>1</sup>

Immediately after the court's ruling, defendant pled no contest to count 2, possession of ecstasy for sale. Her sentence was suspended and she was placed on five years formal probation.

#### DISCUSSION

Defendant contends the trial court erred in denying her motion to suppress. She contends the officers had no reasonable suspicion that she was involved in criminal activity. The informant's statement that she was "one of [Playboy's] girls" was too vague to create a reasonable suspicion of her involvement in the drug transaction.

"A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." (*People v. Souza* (1994)

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<sup>1</sup> As counsel acknowledged at oral argument, defendant does not raise the issue of the failure of Deputy Mukai to advise her of her rights under *Miranda v. Arizona*, *supra*, 384 U.S. 436 [16 L.Ed.2d 694].

9 Cal.4th 224, 231.) "The corollary to this rule, of course, is that an investigative stop or detention predicated on mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith. [Citation.]" (*In re Tony C.* (1978) 21 Cal.3d 888, 893, superseded on other grounds by Cal. Const., art. I, § 28.)

"The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of his investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal - to 'enable the police to quickly determine whether they should allow the suspect to go about his business or hold him to answer charges.' [Citation.]" (*In re Tony C., supra*, 21 Cal.3d at p. 894.)

Here, articulable facts supported the detention. A confidential informant, under police monitoring, had set up a purchase for a quarter-ounce of cocaine base. The identified seller arrived at the location with "one of his girls." The narcotics detective knew that drug sellers often worked in tandem. Where the seller was on searchable probation or parole, someone else often held the drugs. This practice was common for those who sold on the street. Defendant was obviously with Playboy; they crossed the street being only six inches apart. Defendant's close association with a suspected drug dealer at the moment of an arranged sale provided reasonable suspicion of her involvement in criminal activity. (See *People v. Samples*

(1996) 48 Cal.App.4th 1197, 1206 [close association with several subjects of search warrant then being executed provided basis for detention].)

Defendant argues association is not enough and relies on *United States v. Di Re* (1948) 332 U.S. 581 [92 L.Ed. 210] (*Di Re*). In *Di Re*, an informant told an investigator that he was to buy counterfeit gasoline ration coupons from a certain Buttitta at a place in Buffalo. The investigator and a detective followed Buttitta's car and came upon it parked at the appointed place. Inside they found the informant with two counterfeit coupons in his hand, Buttitta, and defendant. All three were arrested and searched. Additional counterfeit gasoline coupons were found on defendant. (*Id.* at p. 583.)

The government sought to justify the warrantless arrest on the basis that defendant was engaged in a felony conspiracy. The United States Supreme Court disagreed. There was no evidence linking defendant to the counterfeit coupons obtained from Buttitta. "The argument that one who 'accompanies a criminal to a crime rendezvous' cannot be assumed to be a bystander, forceful enough in some circumstances, is farfetched when the meeting is not secretive or in a suspicious hide-out but in broad daylight, in plain sight of passersby, in a public street of a large city, and where the alleged substantive crime is one which does not necessarily involve any act visibly criminal." (*Di Re, supra*, at p. 593 [92 L.Ed. at p. 219].) Further, the informant identified only Buttitta as the guilty party. (*Id.* at p. 594.)

We find *Di Re* readily distinguishable. First, it is not a Fourth Amendment case. Instead, the issue was whether the arrest was justified under New York law. (*Di Re, supra*, 332 U.S. at p. 589 [92 L.Ed. 217.]) Second, the seizure involved in *Di Re* was an arrest, not a detention as here. A detention is a less intrusive seizure requiring only reasonable suspicion, not the probable cause required for an arrest. (*People v. Durazo* (2004) 124 Cal.App.4th 728, 734.) Third, unlike passing counterfeit gasoline coupons, which involves only pieces of paper, drug dealing is a visibly criminal activity. Finally, the informant did not single out Playboy as the only guilty party. He identified defendant as "one of [Playboy's] girls," which at least suggested she may be involved.

The facts demonstrated a reasonable suspicion that defendant was involved in criminal activity, justifying her detention. The court did not err in denying defendant's motion to suppress.

#### DISPOSITION

The judgment is affirmed.

We concur: \_\_\_\_\_ MORRISON, J.

\_\_\_\_\_ SCOTLAND, P. J.

\_\_\_\_\_ ROBIE, J.